

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed Emergency**

**Rule making related to behavior analysts and assistant behavior analysts**

The Board of Behavioral Science hereby amends Chapter 5, “Fees,” Chapter 31, “Licensure of Marital and Family Therapists and Mental Health Counselors,” and Chapter 33, “Discipline for Marital and Family Therapists and Mental Health Counselors,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 154D.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 154D.

*Purpose and Summary*

These amendments add licensing rules for two new professions, behavior analysts and assistant behavior analysts. The amendments also set license fees at \$300 for the two new professions.

*Reason for Adoption of Rule Making Without  
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation are unnecessary or impractical because emergency adoption was approved by the Administrative Rules Review Committee. These amendments implement the provisions of 2018 Iowa Acts, chapter 1106, which became effective January 1, 2019, without appreciably adding to those provisions.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee at its March 8, 2019, meeting reviewed the Board’s determination and this rule making and approved the emergency adoption.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Board also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on March 22, 2019, because it allows the Board to start licensing individuals so they can practice and receive insurance reimbursement.

*Adoption of Rule Making*

This rule making was adopted by the Board on March 14, 2019.

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4389C** to allow for public comment.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making became effective on March 22, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 5.3(10):

**5.3(10)** License fee for license to practice as a behavior analyst or assistant behavior analyst is \$300.

ITEM 2. Amend **645—Chapter 31**, title, as follows:

LICENSURE OF MARITAL AND FAMILY THERAPISTS,  
~~AND MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT~~  
BEHAVIOR ANALYSTS

ITEM 3. Amend rule **645—31.1(154D)**, definitions of “Licensee” and “License expiration date,” as follows:

“*Licensee*” means any person licensed to practice as a marital and family therapist, ~~or~~ mental health counselor, behavior analyst, or assistant behavior analyst in the state of Iowa.

“*License expiration date*” means September 30 of even-numbered years for marital and family therapists and mental health counselors, and means the expiration date of the certification issued by the Behavior Analyst Certification Board for behavior analysts and assistant behavior analysts.

ITEM 4. Adopt the following **new** definition of “BACB” in rule **645—31.1(154D)**:

“*BACB*” means the Behavior Analyst Certification Board.

ITEM 5. Amend rule 645—31.2(154D), introductory paragraph, as follows:

**645—31.2(154D) Requirements for permanent and temporary licensure as a mental health counselor or marriage and family therapist.** The following criteria shall apply to licensure:

ITEM 6. Amend rule 645—31.3(154D), introductory paragraph, as follows:

**645—31.3(154D) Examination requirements for mental health counselors and marital and family therapists.** The following criteria shall apply to the written examination(s):

ITEM 7. Amend rule 645—31.8(154D), introductory paragraph, as follows:

**645—31.8(154D) Licensure by endorsement for mental health counselors and marital and family therapists.** An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

ITEM 8. Adopt the following **new** rule 645—31.9(147):

**645—31.9(147) Licensure of behavior analysts and assistant behavior analysts.**

**31.9(1)** The applicant shall complete a board-approved application. Application forms may be obtained from the board's website ([www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure)) or directly from the board office. All paper applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**31.9(2)** The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

**31.9(3)** Each application shall be accompanied by the appropriate fees payable to the board of behavioral science. The fees are nonrefundable.

**31.9(4)** For licensure as a behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral. For licensure as an assistant behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified assistant behavior analyst.

ITEM 9. Amend rule 645—31.10(147), catchwords, as follows:

**645—31.10(147) License renewal for mental health counselors and marriage and family therapists.**

ITEM 10. Adopt the following new rule 645—31.11(272C):

**645—31.11(272C) Initial licensing, reactivation, and license renewal for behavior analysts and assistant behavior analysts.**

**31.11(1)** An initial license for a behavior analyst or assistant behavior analyst shall be issued with the same expiration date as the applicant's current certification issued by BACB.

**31.11(2)** The biennial license renewal period for a behavior analyst or assistant behavior analyst shall run concurrent with the licensee's BACB certification. Each license renewed shall be given the expiration date that is on the licensee's current BACB certification. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

**31.11(3)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements required by BACB to renew a certification.
- b. Maintain current certification as a board-certified behavior analyst, board-certified behavior analyst-doctoral, or board-certified assistant behavior analyst issued by BACB.
- c. Submit the completed renewal application and renewal fee before the license expiration date.

**31.11(4)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

**31.11(5)** A person licensed as a behavior analyst or assistant behavior analyst shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

**31.11(6)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**31.11(7)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not engage in the practice of applied behavior analysis for which a license is required in Iowa until the license is reactivated. A licensee who practices applied behavior analysis in a capacity that requires licensure in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

**31.11(8) Reactivation.** To apply for reactivation of an inactive license, a licensee shall submit a completed renewal application and proof of current certification and shall be assessed a reactivation fee as specified in 645—subrule 5.3(5).

ITEM 11. Amend rule 645—31.16(17A,147,272C), introductory paragraph, as follows:

**645—31.16(17A,147,272C) License reactivation for mental health counselors and marital and family therapists.** To apply for reactivation of an inactive license, a licensee shall:

ITEM 12. Amend rule 645—31.17(17A,147,272C) as follows:

**645—31.17(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—31.16(17A,147,272C) or subrule 31.11(8) prior to practicing mental health counseling, ~~or~~ marital and family therapy, or applied behavior analysis in this state.

ITEM 13. Amend **645—Chapter 33**, title, as follows:

DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS,  
~~AND~~ MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT  
BEHAVIOR ANALYSTS

ITEM 14. Amend rule **645—33.1(154D)**, definition of “Licensee,” as follows:

“*Licensee*” means a person licensed to practice as a marital and family therapist, ~~or~~ mental health counselor, behavior analyst, or assistant behavior analyst in Iowa.

ITEM 15. Adopt the following new paragraph **33.2(1)“c”**:

*c. Behavior analysts and assistant behavior analysts.* Failure to comply with the current Behavior Analyst Certification Board (BACB) Professional and Ethical Compliance Code for Behavior Analysts, which is hereby adopted by reference. Copies of the Professional and Ethical Compliance Code may be obtained from the BACB website.

ITEM 16. Amend subrule 33.2(14) as follows:

**33.2(14)** Revocation, suspension, or other disciplinary action taken by a licensing authority or professional certifying entity of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority or certifying entity within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

ITEM 17. Amend subrule 33.2(24) as follows:

**33.2(24)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a marital and family therapist, ~~or a~~ mental health counselor, behavior analyst, or assistant behavior analyst.

ITEM 18. Amend subrule 33.2(26) as follows:

**33.2(26)** Representing oneself as a licensed marital and family therapist, ~~or~~ mental health counselor, behavior analyst, or assistant behavior analyst when one’s license has been suspended or revoked, or when one’s license is on inactive status.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/10/19.